

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ NOV 7 - 2013 ★

BROOKLYN OFFICE

JOHNSON & JOHNSON AND LIFESCAN, INC.,

Plaintiffs,

- against -

SOUTH POINTE WHOLESALE, INC., ET AL.,

Defendants.

08 Civ. 1297 (SLT) (SMG)

CONSENT JUDGMENT AND
PERMANENT INJUNCTION

On consent of Plaintiffs Johnson & Johnson and LifeScan, Inc. ("LifeScan"),

(together, "Plaintiffs") and Defendants Sterling Wholesale, LLC and Jeffrey B. Littman

(collectively, the "Sterling Wholesale Defendants"), it hereby is ORDERED, ADJUDGED AND

DECREED:

1. The Sterling Wholesale Defendants and their agents, servants, employees, affiliates, subsidiaries, and all other persons in active concert and participation with them are permanently enjoined from:

(a) using in commerce any of the OneTouch Marks on any counterfeit or repackaged product in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of OneTouch blood glucose test strips and meters (the "OneTouch Products"). The OneTouch Marks are defined collectively as LIFESCAN (Reg. No. 1,384,863), ONETOUCH (Reg. Nos. 3,039,103; 2,863,393), ONE TOUCH (Reg. Nos. 1,484,999; 2,710,143), ONE TOUCH ULTRA (Reg. No. 2,538,658), INDUO (Reg. No. 2,652,567), ULTRASMART (Reg. No. 2,730,626); and JOHNSON & JOHNSON (Reg. No. 0,648,450);

(b) affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation including words or other symbols tending to falsely describe or represent such goods as being OneTouch blood glucose test strips and from offering such goods in commerce;

(c) holding themselves out to be an authorized distributor of OneTouch Products;

(d) buying, selling, or otherwise using in commerce any blood glucose test strip intended for use in any blood glucose meter bearing the OneTouch Marks; and

(e) buying, selling, or otherwise using in commerce any genuine products bearing the OneTouch Marks.

2. Nothing contained in this Consent Judgment and Permanent Injunction is or shall be construed to constitute an admission, express or implied, of any improper or illegal conduct, or of any culpability or liability by the Sterling Wholesale Defendants.

3. In addition to other remedies, including damages, for contempt of this Consent Judgment, in the event of breach or violation by the Sterling Wholesale Defendants, their agents, servants, employees, affiliates, subsidiaries, or any other persons in active concert and participation with them of the terms of this Consent Judgment, Plaintiffs are entitled to a preliminary and permanent injunction against the breaching conduct solely upon a showing of a likelihood of success of establishing that such a breach occurred. Plaintiffs and the Sterling Wholesale Defendants each agree that jurisdiction and venue for such an action exist in this District Court, and the Sterling Wholesale Defendants waive any and all defenses based on personal jurisdiction, subject matter jurisdiction and venue.

4. This Consent Judgment is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure, and this action is hereby dismissed, with prejudice, only against the Sterling Wholesale Defendants without costs or attorney's fees, save that this District Court shall retain jurisdiction over this action, including, without limitation, over implementation of, or disputes arising out of, this Consent Judgment or the settlement of this action with regard to the Sterling Wholesale Defendants. A prevailing party, in addition to any award of damages or injunctive relief, shall be entitled to an award of actual attorneys' fees in any such dispute.

5. Signatures transmitted electronically or by facsimile shall be deemed original.

Dated: September 30, 2013

CONSENTED AND AGREED TO BY:

STERLING WHOLESALE, LLC

Date: 9/30/13


By: Jeffrey B. Littman

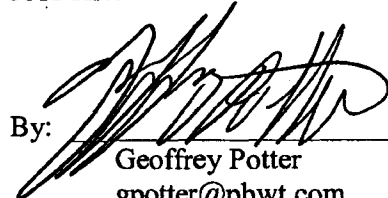
JEFFREY B. LITTMAN

Date: 9/30/13



By: Jeffrey B. Littman

PATTERSON BELKNAP WEBB & TYLER LLP

CALLAN KOSTER BRADY &
BRENNAN

By: 
Geoffrey Potter
gpotter@pbwt.com
Christos Yatrakis
cyatrakis@pbwt.com

1133 Avenue of the Americas
New York, New York 10036
(212) 336-2000
Attorneys for Johnson & Johnson and LifeScan

By: 
Paul Callan
pcallan@ckbbllaw.com
Stephen Barrett
sbarrett@ckbbllaw.com
One Whitehall Street, 10th Floor
New York, New York 10004
(212) 248-8800
Attorneys for Defendants Sterling

Inc.

Wholesale, LLC and Jeffrey B. Littman

SO ORDERED:

11/1/13

/s/(SLT)

UNITED STATES DISTRICT JUDGE